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January 15, 2015

RE: House Bill 195

To the Honorable Jerry Bennett, Chairman, and members of Judiciary Committee of the Montana House of Representatives,

The Missoula City Attorney's Office wishes to express its support of HB 195, and to request that the members of the House Judiciary Committee vote to recommend passage. Presently, if a charge has already been filed into court, subsection (3) of § 46-16-130, MCA, requires court "approval" of pretrial diversion, also commonly known as deferred prosecution agreements (DPAs). Subsection (3) does not define the term "approval," and does not contain a protocol or standard by which to approve or disapprove. The reason for this lack of definition, protocol or standard, is that the original intent of the Commission on Criminal Procedure and the 1991 Legislature was for the approval provision to be one of procedure, and not substance, to wit: When a charge has already been filed into a court and the prosecution & defense enter into a DPA, there must be a mechanism to notify the court and to take the case off the trial docket and place it into an inactive status.

Neither the Commission nor the Legislature intended to subject a prosecutor's decision to divert, or defer, prosecution to judicial review. However, a number of courts of limited jurisdiction throughout Montana have adopted policies of never accepting, or being opposed to, DPAs. Such blanket policies result in an unconstitutional invasion of the judiciary into the administrative branch of government (the prosecution), in violation of the separation of powers. Moreover, such policies do not take into consideration the unique facts and circumstances of individual cases.

For example, this past year our office prosecuted a boyfriend and girlfriend both of whom were charged with Partner or Family Member Assault arising from the same incident. Boyfriend moved to Louisiana and had warrants out in his case, and had no intention of coming back for his own case, much less the case against his girlfriend in which he was the alleged victim. Our evidence, however, included incriminating admissions by the girlfriend to law enforcement that may have been sufficient to convince a jury to convict her. Our prosecutors, who have over 100 years of combined prosecution experience, felt that the chances of a jury convicting were 50:50. The defense attorney who represented the girlfriend approached our office about the possibility of a DPA because he felt that there was a risk of conviction if the case went to trial. His client was willing to get a chemical dependency evaluation, obtain treatment, attend counseling for violence issues, not drink and be subject to testing, and obey all laws. Given the risk to both sides – prosecution and defense – we agreed that a DPA with those conditions was in both sides' best interest.

Although both prosecution and defense explained the unique facts and circumstances in support of the DPA, the Court's response was, "No, I'm not going to accept a DPA because that's my policy now," without providing any further explanation. Because the Court's rejection of a DPA is not subject to direct or interlocutory appeal, we lacked the ability to challenge what happened.

Thank you for your consideration of House Bill 195. We urge you to vote in favor of passage.

Sincerely,

Jim Nugent

Jim Nugent, on behalf of all eight attorneys of the Missoula City Attorney's Office

Mr. Chairman and members of the committee,

My name is Kelly Reisbeck from Helena, MT. I have been in the Bail Bond Business for 25 years. We currently have 1476 people under supervision within our agency alone, saving the MT taxpayers approximately $95000 per day, or roughly $35 million per year.

I am here today in support of Senate Bill 223. We have essentially 3 requested changes that will help clarify current law while improving our industry, our relationship with the courts, and our relationship with the Montana State Insurance Commissioner's Office, who I believe is also here today in support of this bill.

1. Eliminate the ability of courts to set bail and then themselves collect only a percentage or installment payments, essentially removing our industry from the process and increasing the likelihood local law enforcement would become overwhelmed with the burden of returning those who fail to appear in court to justice; a burden our industry provides without cost to MT. taxpayers.
2. Increasing the length of time that our industry is allowed to return a defendant to custody for failure to appear from 90 days to 180 days; a length of time comparable with other states in our region and giving us the opportunity to help decrease the jail overcrowding problems throughout the state.
3. Clarifying the current law for when our industry is able to surrender a defendant to custody while working in conjunction with the State Insurance Commissioner's Office to suppress questionable activity performed by a select few in order to protect the rights of our citizens.

We hope that you will support our bill, and thank you for its consideration.

Kelly Reisbeck

Title 77 Utah Code of Criminal Procedure
Chapter 20b Bail Surety
Section 102 Time for bringing defendant to court.

77-20b-102. Time for bringing defendant to court.

(1) If notice of nonappearance has been mailed to a surety under Section **77-20b-101**, the surety may bring the defendant before the court or surrender the defendant into the custody of a county sheriff within the state within six months of the date of nonappearance, during which time a forfeiture action on the bond may not be brought.

(2) A surety may request an extension of the six-month time period in Subsection (1), if the surety within that time:

(a) files a motion for extension with the court; and

(b) mails the motion for extension and a notice of hearing on the motion to the prosecutor.

(3) The court may extend the six-month time in Subsection (1) for not more than 60 days, if the surety has complied with Subsection (2) and the court finds good cause.

Amended by Chapter 259, 2000 General Session

Idaho Statutes

TITLE 19
CRIMINAL PROCEDURE

CHAPTER 29
IDAHO BAIL ACT

19-2918. REMITTANCE OF FORFEITURE -- PAYMENT OF BAIL. (1) The person posting bail shall pay to the clerk of the court the amount of bail ordered within five (5) business days after the expiration of the one hundred eighty (180) day period following the order of forfeiture of bail unless:

(a) The order of forfeiture has been set aside by the court;

(b) The bail has been exonerated by the court; or

(c) A motion to set aside the order of forfeiture or a motion to exonerate bail has been timely filed, together with a request for hearing, and has not been decided by the court. If the motion is decided and denied by the court more than one hundred eighty (180) days after the order of forfeiture, then the person posting bail shall pay the amount of bail to the clerk of the court within five (5) business days after the entry of the court's order denying the motion. A timely filed notice of appeal and motion to stay the forfeiture stays the obligation to remit payment until five (5) business days after the entry of the court's order denying the motion to stay or, in the event such motion is granted, five (5) business days following the final determination of the appeal.

(2) If cash is deposited in lieu of bail, the clerk of the court shall pay the cash deposit to the county treasurer. If the person posting a bail bond or property bond that has been forfeited does not pay the amount of bail within the time provided in this section, then the order of forfeiture shall become a judgment against the person posting the bail bond or property bond.

(3) After the notice required by section 19-2915, Idaho Code, in the event that a surety insurance company fails to pay the amount of any bail forfeited within the time required by this section, the administrative district judge may order the sheriffs and clerks of all counties in the judicial district not to accept the posting of any new bail bonds from such company until the amount of bail forfeited has been paid. An administrative district judge in another district may also order the sheriffs and clerks of all counties in his district not to accept the posting of any new bail bonds from such company until the amount of bail forfeited has been paid.

(4) If the administrative district judge has reasonable cause to believe that a bail agent has committed any of the actions that could form the basis for a suspension of the bail agent's license pursuant to section 41-1039(3), Idaho Code, the court shall immediately refer the matter to the director of the department of insurance for appropriate disciplinary action pursuant to sections 41-1016 and 41-1039, Idaho Code, and may enter

PENAL CODE
SECTION 1305-1308

1305. (a) A court shall in open court declare forfeited the undertaking of bail or the money or property deposited as bail if, without sufficient excuse, a defendant fails to appear for any of the following:

(1) Arraignment.

(2) Trial.

(3) Judgment.

(4) Any other occasion prior to the pronouncement of judgment if the defendant's presence in court is lawfully required.

(5) To surrender himself or herself in execution of the judgment after appeal.

However, the court shall not have jurisdiction to declare a forfeiture and the bail shall be released of all obligations under the bond if the case is dismissed or if no complaint is filed within 15 days from the date of arraignment.

(b) If the amount of the bond or money or property deposited exceeds four hundred dollars ($400), the clerk of the court shall, within 30 days of the forfeiture, mail notice of the forfeiture to the surety or the depositor of money posted instead of bail. At the same time, the court shall mail a copy of the forfeiture notice to the bail agent whose name appears on the bond. The clerk shall also execute a certificate of mailing of the forfeiture notice and shall place the certificate in the court's file. If the notice of forfeiture is required to be mailed pursuant to this section, the 180-day period provided for in this section shall be extended by a period of five days to allow for the mailing.

If the surety is an authorized corporate surety, and if the bond plainly displays the mailing address of the corporate surety and the bail agent, then notice of the forfeiture shall be mailed to the surety at that address and to the bail agent, and mailing alone to the surety or the bail agent shall not constitute compliance with this section.

The surety or depositor shall be released of all obligations under the bond if any of the following conditions apply:

(1) The clerk fails to mail the notice of forfeiture in accordance with this section within 30 days after the entry of the forfeiture.

(2) The clerk fails to mail the notice of forfeiture to the surety at the address printed on the bond.

(3) The clerk fails to mail a copy of the notice of forfeiture to the bail agent at the address shown on the bond.

(c) (1) If the defendant appears either voluntarily or in custody after surrender or arrest in court within 180 days of the date of forfeiture or within 180 days of the date of mailing of the notice if the notice is required under subdivision (b), the court shall, on its own motion at the time the defendant first appears in court on the case in which the forfeiture was entered, direct the order of forfeiture to be vacated and the bond exonerated. If the court fails to so act on its own motion, then the surety's or depositor's obligations under the bond shall be immediately vacated and the bond exonerated. An order vacating the forfeiture and exonerating the bond may be made on terms that are just and do not exceed the terms imposed in similar situations with respect to other forms of pretrial release.